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TAGS: [ETRD](#) [KIPR](#) [ECON](#) [UP](#)
SUBJECT: UKRAINE: IP RIGHTS HOLDERS STILL DISSATISFIED WITH
COLLECTIVE MANAGEMENT -- PUBLIC PERFORMANCE PIRACY

REFS: A) KYIV 503

B) KYIV 404
C) 2007 KYIV 2260

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11. (SBU) Summary: The recording industry remains concerned about public performance piracy -- the failure of intellectual property users to make royalty payments -- in Ukraine. The industry regards Ukrainian TV stations as particularly problematic. Industry reps would like to see increased criminal penalties and broader use of the government's regulatory authorities. The GOU has agreed to work with industry's proposals but is concerned about over-criminalizing the issue. Indeed, the heart of the problem appears to be rights holders' lack of civil remedies, which can only come with long-term improvements in Ukrainian courts' familiarity with intellectual property rights. End Summary.

12. (U) Econoff attended a February 19-21 Intellectual Property Rights (IPR) Conference organized by the GOU in Svalyava, Ukraine and a March 5 IPR roundtable hosted by the European Commission (ref A). Both events devoted sessions to problems of collective management and public performance piracy. Rights holders have long complained that some royalty collecting societies do not properly return royalty payments to rights holders and that only a small fraction (about 5-7%) of the market properly pays performance royalties (ref B,C, and previous).

GOU Conference: Royalty Collecting Societies Frustrated

13. (SBU) Pavlo Kalenychenko, Director of the royalty collecting society Ukrainian Music Alliance (UMA), detailed the difficulties to get IP users, such as restaurants and bars, to make royalty payments. Tamara Davydenko, Head of the Copyright Division at the State Department of Intellectual Property (SDIP), said she hoped an information campaign could help to get IP users to willingly pay royalties. (Note: Davydenko also publicly recognized UMA and the Ukrainian Music Rights League (UMRL) -- the two royalty collecting societies supported by IFPI -- as the primary societies operating in Ukraine, a positive development in this long-running saga. Industry had

previously expressed concerned over GOU support for rogue collecting society Oberih (ref C and previous). End note.)

TV Stations Particularly Problematic

¶4. (SBU) Vadim Koktysh, Director of Ukrainian recording company Honest Music, criticized representatives of local TV stations present at the GOU conference for failing to make royalty payments on music they played as part of TV programs. The TV station reps in turn complained that they had not budgeted for royalty payments and that making such payments would cause their stations severe financial damage. (Comment: Although not intending to do so, the TV station reps appeared to admit that they were in fact avoiding royalty payments owed to rights holders, and that they were doing so for purely financial reasons. End Comment.) Valentin Chebotaryov, SDIP Deputy Chairman, on March 5 lambasted as "ridiculous" a letter recently sent to SDIP from TV stations repeating the argument that they could not make royalty payments due to budget constraints.

Way Forward - Amend Criminal Code?

¶5. (U) Ignat Berezhny, Director of the Ukrainian Association of the Music Industry, argued that Article 176 of Ukraine's Criminal Code should be applied more broadly to IP users who play music without authorization from rights holders. Berezhny said that industry reps would soon provide the GOU with suggested amendments to the Criminal Code to provide for stricter penalties in such cases. Oleg Levchenko, from a smaller royalty collecting society, argued that the primary enforcement problem was the courts, as judges frequently ruled in favor of defendants even when presented with overwhelming evidence.

Chebotaryov said SDIP agreed that the Criminal Code needed amendment and expressed his willingness to work with industry's draft.

Or Use Regulatory Authorities?

¶6. (SBU) Chebotaryov cautioned, however, that he did not want to over-criminalize public performance piracy. Oleg Dolinsky, Managing Director of Comp Music (an EMI Licensee), noted that the biggest IP users -- restaurants, bars, and TV and radio stations -- all had to obtain government-issued licenses to run their businesses, and he asked if the GOU could withhold licenses from IP users who failed to make royalty payments. Chebotaryov responded that he had personally argued before Ukraine's TV and radio regulatory body that copyright protection requirements should be included in the licensing process. Yet these efforts failed, said Chebotaryov, as other GOU agencies argued that SDIP was trying to interfere excessively in business activities.

Comment: Lack of Civil Remedies

¶7. (SBU) Public performance piracy -- the failure of IP users to make royalty payments -- continues to be a problem in Ukraine. The GOU has demonstrated goodwill in addressing this problem, however, both by recognizing the legitimacy of industry-supported royalty collecting societies, and by agreeing to try to step up criminal enforcement in this area. Yet, as several of the roundtable participants noted, the real solution to the problem likely lies in better civil remedies for rights holders. Such improvements will require a judiciary better informed on IPR. Law enforcement cannot shut down every restaurant and bar playing unlicensed music, and, indeed, should not be spending its limited resources on these types of cases. Post hopes that its continued efforts to focus IPR training activities on judges will help lead to long-

term progress and a system that corresponds more to those prevalent in western Europe, where IP users pay royalties without the continual involvement of law enforcement. End comment.

TAYLOR